

MINUTES  
**WARRICK COUNTY AREA PLAN COMMISSION**  
Regular meeting held in Commissioners Meeting Room,  
Third Floor, Historic Court House,  
Boonville, IN  
Monday, April 9, 2012, 6:00 PM

A moment of silence was held followed by the Pledge of Allegiance

**MEMBERS PRESENT:** Guy Gentry, President; Amanda Mosiman, Mike Moesner, Brad Overton, Marlin Weisheit and Jeff Valiant.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

**MEMBERS ABSENT:** None

**MINUTES:** Upon a motion made by Larry Wills and seconded by Marlin Weisheit, the Minutes of the last regular meeting held March 12, 2012, were approved as circulated.

The President explained the Rules of Procedure to the audience.

**SUBDIVISION FOR PRIMARY PLAT APPROVAL:**

**PP-12-03 – Gateway Business Park** by Delta Properties, LLC, by Evan Beck, Managing Member. OWNERS: Delta Properties, LLC, by Evan Beck, Managing Member (26.946 acres) and Crown Mark Properties, LLC, by Evan Beck, Managing Member (Lot 2 Grimm Road Commercial – 3.264 acres) being a total of 30.21 acres located on the S side of SR 66 approximately 0' E of the intersection formed by Grimm Rd. (W 1000) & SR 66. Ohio Twp. *Complete legal on file. Advertised in the Boonville Standard March 29, 2012. Also includes a Covenant regarding roadway and acknowledgment and consent to construction of roadways within easements/or release of easement from utilities.*

Jim Morley, Jr., Morley and Associates and Evan Beck were present.

The President called for a staff report.

Mrs. Rector said they still need the green card or unopened envelopes from River Valley Homes, Ray Lambert, and Todd Mahooty. She said this property is zoned C-4 with a Use and Development and it does have some 500 year flood plain. She stated this is a proposed 18 lot commercial subdivision. She said the Commissioners approved the street plans today conditioned upon the execution of consent agreements from Newburgh Sewer and Vectren for the construction of the streets within their recorded easements and also conditioned upon the execution of Covenant of Roadway by both LLCs involved in this subdivision (Crown Mark and Delta Properties). She said it also removed a shared driveway between lots 1 & 2 of Grimm Road Commercial with the new entrance of Eastgate Court. She added the Letter of Credit for the

street improvements must be secured by both LLCs. Mrs. Rector said the Drainage Board approved the drainage plans today and they also removed one retention basin on Lot 2 of Grimm Road Commercial Subdivision and relocated the retention to two different locations on this plat. She said they have a capacity letter from Newburgh Sewer and a water capacity letter from Chandler and Indiana American. She explained this is a commercial subdivision. She said she and Attorney Doll, the County Engineer, Mr. Morley and Mr. Beck met this morning. She said the plat is in technical conformity and any approval should be with the following conditions: 1. Agreement recorded and cross referenced to the final plat covering damage to roadway and a note put on the plat. She added they have added that note on the plat since they met this morning. And the Commissioners accepted the road agreement. 2. Consent for construction of roadway across Vectren and Newburgh utility easements. She said she believes Mr. Morley is meeting with them later this week. 3. Consent from Vectren allowing easements within their easement. 4. Private Restrictive Covenants recorded with final plat covering maintenance of lake maintenance and drainage easements and maintenance of outlot. She said of course the County doesn't enforce private restrictions but they would say who would maintain the easements and it is not Warrick County.

Mr. Morley said he has spoken with Vectren and Newburgh Sewer. He said Newburgh Sewer doesn't seem to have an issue but they have to wait for their Board meeting on Wednesday to sign it. He said they have been emailing back and forth with Vectren and they had them make some changes and he expects to have it in his email this evening. He said all of the roadway items Mrs. Rector mentioned have all been approved by all of the approving Boards it just has to be recorded with the plat. He said he believes they have tied down all of the loose ends but there isn't anything to keep the project from moving forward. He said this is a pretty standard commercial subdivision and they have the street and drainage approval.

Guy Gentry said he knows the retention basin that was on lot 2 got moved and for his clarification where the retention is now.

Mr. Morley said there are now three basins, two wet and one dry. He said originally there was a basin on the Mosque property and the one on lot 2 and so it just worked out to have the retention down the hill closer to the creek. He said all of those have been approved by the Drainage Board and it meets or exceeds the current ordinances.

Ascertaining there were no other questions from the Board and being no remonstrators present, the President called for a motion.

Guy Gentry made a motion to approve PP-12-03 with the four conditions stated by the Executive Director. The motion was seconded by Larry Willis and unanimously carried.

### **OTHER BUSINESS:**

**Warrick County Commissioners Resolution 2012-03** – A resolution regarding the present condition of 4811 Overland Drive, Newburgh, Indiana.

Mrs. Rector said this resolution was passed by the Commissioners on January 9<sup>th</sup> of this year and it is regarding the house in Fall Creek Subdivision which was severely damaged by fire and it is being investigated. She said basically it is asking the Plan Commission to take over cleaning up the property as it being a zoning violation. She said today she spoke with State Farm Insurance who has the insurance on the house and they are still doing their investigation. Mrs. Rector said they met with the property owners about three weeks ago and they gave them their version of what happened as well as a list of individuals as witnesses; however, they did not provide them with a way to contact the witnesses. She said they have sent a letter to their attorney (Mark Phillips) requesting those. She said if State Farm doesn't receive this information by the end of the week they will have the insurance company's attorney write Mr. Phillips a letter and give them two weeks to respond. She said the agent told her they need to speak to these individuals before they make their final decision on the claim. She said he also recommended that this is continued to the June 11<sup>th</sup> meeting to give them time to process the claim. Mrs. Rector said she has also spoken with Sheriff Kruse who said this has been turned over to the Prosecutor however, the Prosecutor is not going to decide on what, if any, charges until the insurance company is done. She said the Sheriff also recommends waiting until the June meeting before taking any action.

Mrs. Rector said so this is still being investigated and there is still the possibility that the insurance will follow through and hire a company to remove the house and to cover the damages. She said even though there may have been a crime committed their insurance still covers that but they still need to finalize the claim, talk to a few of the witnesses who were there and are witnesses of the property owner. She said she believes it is hard to prove how the fire started because it was so bad in the garage and so there may not be charges that can be filed, if a crime was committed.

Mrs. Rector said they have pictures of the house and it has been boarded up and supposedly cleaned the yard up. She said an individual did call the office the other day about the grass needing to be mowed and he was told to call the Ohio Township Trustee because they have the funds to mow the yards and then they pass the cost on to the property owner. She said she doesn't know if that has been done or not. She said it is the Board's decision whether to give this until June to give the insurance company a chance to follow through with their investigation. She said they may need to continue to go into the house to complete their investigation and so she isn't sure they can "remove" anything from the property yet until the Sheriff, Prosecutor and insurance company has decided what really happened there.

Larry Willis asked who requested this wait until June.

Mrs. Rector said she spoke to the insurance company as well as Sheriff Kruse. She said the Prosecutor can't finish their investigation until the insurance company does because anything told to the insurance company can and will be used in the prosecution.

Marlin Weisheit said this is getting drug out but he thinks it will take care of itself since it is insured. He said it is unfortunate...but since they did board it up and kind of secure it for safety issues; he is convinced it will take care of itself in time.

Guy Gentry said right now there is nothing they can do because ...criminally...they would be contaminating evidence.

Amanda Mosiman made a motion to table Resolution 2012-03 until June. Mike Moesner seconded the motion and it carried unanimously.

Don Benjamin said he lives across the street from this house and it sounds like they are claiming there are some witnesses there when this happen.

Guy Gentry said he never heard that before either.

Mrs. Rector said this is what the insurance agent told her. She said he told her they met with the owners and they gave their version of what happened as well as a list of individuals as witnesses that were there right after the fire. She said he didn't say what they said or witnessed or anything confidential.

Mr. Benjamin said if it is neighbors they are wasting their time because the neighbors are pretty...

Mrs. Rector said she doesn't think it is neighbors. She doesn't know if they are people who were there when it happened or came over right after. She said when she talked to the agent a couple of months ago he never said anything about witnesses but he may not have talked to the owners at that time.

Mr. Benjamin said another thing that is new is the insurance company is saying that even if it is a felony they will still insure the house.

Mrs. Rector said they could. She said the agent said State Farm is one insurance company that even though you come and say I burned my house down making drugs, they will still pay the claim.

Irene Benjamin said she spoke with the agent and he said that was a fact on this particular policy. She said they live directly across the street and see this mess from their front and garage every time they go and come. She said they find shingles in their yard and it is a horrendous eye sore and as of Thursday when they left to leave town the grass was a weedy mess. She said she would certainly request they show them no leverage at all so far as getting it cleaned up.

Guy Gentry said they would love to get it cleaned up as soon as possible but again they can't do anything if it is under investigation for criminal things. He said as far as the weeds, have they contacted the Township Trustee.

Mrs. Benjamin said no, she was told when she called the office and learned about this being on the agenda tonight that it had been done as was reported earlier. She said they have been gone and are in route home. She said they wanted to stop in here tonight to see what this Resolution was about. She said to wait for another sixty days to June is...why should the insurance company not be pressed.

Guy Gentry said this Board can't press them; they should make the call as well. He said the Resolution was more for this Board to get it cleaned up and they can't yet until it is released.

Larry Willis said it isn't just the insurance company it is the Sheriff too.

Mrs. Benjamin said who can they pressure; they have called the insurance company and the agent passed the buck saying it was now out of his hands, he was just the guy who wrote the policy.

Guy Gentry said that is really the only leverage at this time because ultimately it is their responsibility. He said when they say they are not going to do it or they can't do it then there may be some County involvement at that point if the place has been released to where it can be cleaned up.

Mrs. Benjamin said it will only get worse not better so far as being secured because things get shaggy and pieces fall.

Marlin Weisheit said he understands and he was hoping once the Sheriff and Prosecutor got done with their investigation the insurance would go ahead. He said he doesn't personally understand what the holdup is. He said you would think the insurance would ...as soon as the investigation is over what else is there to investigate. He said they have had more than enough time to and it is time to move on with it. He said maybe they all need to contact the insurance company.

Mrs. Benjamin said Thursday when they were in the process of leaving a neighbor walked by and said they were thinking of organizing anyone insured with State Farm and seeing the media and try to pressure them that way.

Marlin Weisheit said he has had State Farm Insurance for over forty years and they have always done well and being in law enforcement he has always been happy the way they handle insurance claims so he will make a call to his agent and ask him to please pursue it and if there is a holdup let him know so if it is the Prosecutor or whatever he will make that call too.

**Formal Complaint** ~ Revis Rainey – 2288 N SR 61 ~ Granted until April 6, 2012 to come into compliance.

Mrs. Rector said they haven't heard from Mr. Rainey and nothing has been done with the property. She said some of the adjacent property owners who filed the complaint are here this evening. She said they have pictures in their packets.

Brad Overton said at the last meeting they said if he didn't come into compliance by April 6<sup>th</sup> they would proceed with legal action. He then made a motion to start that process. The motion was seconded by Mike Moesner and unanimously carried.

Guy Gentry asked Attorney Doll to explain to the adjacent property owners what will now happen.

Attorney Doll stated he will be filing a complaint against the landowners for maintaining a public nuisance and for operating a junk yard outside of the permitted zoning and anything else that appears to be violating County ordinances. He said that will be filed in Superior Court 1 and will probably be assigned to the small claims division. He said they will ask the Judge to make a determination that the property owner is in violation of the County ordinance and under that the Court will typically give them another 30 days or thereabouts to clean it up. He said if the property fails to be cleaned up within that time period the Court historically will assess a fine of up to \$300 per day for each day it remains in violation and the Court typically will issue an order for the County to enter the property and remove all violating items. He said the costs are tabulated and a lien is placed on the property.

Randy McNeely said he is a resident in Stonehaven. He said one question he has there is another property below this that also has pallets sitting on their property and they are working on them and then burning parts in a 55 gallon drum. He said he thinks this is something along with the Rainey's and asked if it will be cleaned up at the same time or do they have to file a complaint on this property.

Mrs. Rector said it is a separate property and owner and needs a separate complaint. She said they did have the inspector go by that property and they weren't happy but they do need to file a complaint.

Mr. Doll said he needs a copy of the full complaint and he will notify the complainants of the court date in order for them to appear.

### **Charlene Jarvis ~ 833 Yankeetown Road**

Mrs. Rector said they dealt with this property back in 2005 through 2007. She said the Court ruled they were in violation and the County went in and cleaned it up. She said last week she received an email from Roger Emmons, County Administrator, saying that two people had called in about the property saying it had junk back on it. She said she had asked if they need another complaint to start this all over again since they had been to Court before.

Attorney Doll said they don't file a new case they just re-open the old case but he would like to have a new formal complaint from someone so the Court understands that they are not unilaterally deciding on their own that they were going to re-open it. He said if they can identify from the Commissioners who the property owners are and get them to sign a complaint then he

will use it as part of the motion to re-open the case and notice the parties and ask them to reappear.

Mrs. Rector said so it is his feeling that any property they have taken to Court will need a new complaint filed to re-open the case. She said she wants that to be known so if someone calls the Commissioners they know it is a ruling by the Board.

Attorney Doll said once they have cleaned up the property in one way or another he feels it takes a new complaint from a citizen before they have jurisdiction to start again.

Guy Gentry said he agrees.

Mike Moesner agreed and said if they did what the Board asked and they said they were no longer in violation then a new complaint would have to be filed.

Guy Gentry said he drove by this property on his way from work and it isn't bad yet but there are tires piled up and the yard hasn't been mowed and it is on its way.

Attorney Doll said it is his recollection that this is an absentee owner. He then gave a brief synopsis of the history of this property to the new Board members. He said his intention is to file a complaint to enforce the prior order based upon a new complaint given to them by a citizen. He said they are not re-opening a new case or any of that, just re-activating that one. He said they got good service but no one ever appeared.

Guy Gentry said for consistency and future reference he would entertain a motion that they would like a new complaint filed to re-activate an existing case.

Marlin Weisheit made a motion to require a new complaint be file. The motion was seconded by Larry Willis and unanimously carried.

### **PROPOSED ORDINANCE CHANGE**

#### **Definition of Home Occupation** *Con't from March 12, 2012*

Considerable discussion ensued over home occupations with it being determined by the Board that they would look at each case on an individual basis.

### **ATTORNEY BUSINESS:**

None.

### **EXECUTIVE DIRECTOR BUSINESS:**

None.

Being no other business the meeting adjourned at 7:00 P.M.

---

Guy Gentry, President

ATTEST:

---

Sherri Rector, Executive Director